

## HARYANA GOVERNMENT LABOUR DEPARTMENT

The 2nd June, 1983

No. 9(1)82-6 Lab./4602.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 of Act No. XIV of 1947, the Governor of Haryana is pleased to publish the following award of the Arbitrator, Labour Officer-cum-Conciliation Officer, Ambala Cantt. in respect of the dispute between the workmen and the management of M/s Northern Steel Company, 20/3, Mathura Road, Faridabad.

BEFORE SHRI AMAR SINGH YADAV, H.L.S.,  
LABOUR OFFICER-CUM-CONCILIATION  
OFFICER. (SOLE ARBITRATOR),  
AMBALA CANTT.

IN THE MATTER OF INDUSTRIAL DISPUTE  
BETWEEN THE MANAGEMENT OF M/S  
NORTHERN STEEL COMPANY, 20/3,  
MATHURA ROAD, FARIDABAD AND THEIR  
WORKMEN S/SHRI SREE CHAND BHUDATT  
& 60 OTHERS.

Shri Sunehri Lal, for the Workmen.

Shri K. P. Agarwal, for the Respondent/  
Management.

### AWARD

Vide an agreement dated 3rd August, 1982 published in the Haryana Government Gazette dated 24th August, 1982, the undersigned was appointed as 'Sole Arbitrator' for disposal of the dispute in respect of the following matters :

- (1) Whether the retrenchment effected by the Management was justified and in order ? 2nd January, 1982.
- (2) Whether the workmen given in Annexure 'A' are entitled for re-employment ?

Notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workmen according to their claim statements is that 62 workmen were working in the Respondent Concern for last many years, and they were retrenched on 2nd January, 1982 without following the legal formalities given in Industrial Disputes Act and without giving them a chance for reappointment as required U/s 25-H of I.D. Act, 1947, so the workmen are entitled for reinstatement with continuity service and full back wages.

The case of the Respondent/Management according to written statement is that M/s Northern India Iron & Steel Co. had given their Rolling Mills Division on lease to a partnership firm known as 'M/s Northern Steel Co., with whom the 62 workmen were employed. Since company could not secure adequate raw-material, workmen were laid-off and due intimation was sent to the Authorities. On 24th December, 1981, a List of Seniority was posted on 2nd January, 1982. Retrenchment compensation alongwith Notice pay was given to all workmen. On refusal, it was sent by post. Retrenchment was done fully in accordance with Sec. 25-F of I.D. Act, 1947 and all workmen took their full and final account voluntarily of their own accord. Since total retrenchment was effected, Sec. 25-H of Industrial Disputes Act, 1947 does not apply.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the retrenchment effected by the management was justified and in order ?
- (2) Whether the workmen given in Annexure 'A' are entitled for re-employment ?

The 3rd issue was objected to by the learned Counsel of the Management as it was not mentioned in the Terms of Reference, so it was not pressed by the Representative of the workmen.

My findings on these issues are as under:—  
ISSUE NO. 1 :

MW 1, Mr. Rajvardhan has stated that before closure, the Company had put lay-off notices dated 18th November, 1981; 19th November, 1981; 5th December, 1981; 16th December, 1981; and 26th December, 1981 which are Ex. M-1 to M-9. Intimation in Form O-1 was sent to the Government. Photo copies are Ex. M-10 to M-15. List of Seniority Ex. M-16 was pasted and workmen were offered retrenchment compensation and Notice pay along with the Notice, at the factory gate on 2nd January, 1982. On refusal, it was sent to them by post. Photo copies are Ex. M-17 to M-70 and Postal Receipts copies are Ex. M-71 to M-79.

The workmen have, though admitted lay-off from 18th November, 1981 or 2nd January, 1982 but they have stated that it was done with revengeful attitude because applicants were affiliated to INTUC and the management wanted to favour the CITU existing union. There was no shortage of raw material in the factory. The workmen did not press for summoning any record of the management to prove the same.

Hence the matter of lay-off remains disputed. However, from Ex. M-1 to M-3 it is clear that lay-off notices were exhibited by the management and requisitely intimation was sent to Secretary to Government of Haryana in Form O-1. Ex. M-16 is the copy of List of Seniority pasted on 24th December, 1981 but the workmen have placed on record two list of seniority — One, pertains to staff and the other one relating to workers. MW-1 Shri Rajya Wardhan has stated that on 2nd January, 1982 compensation was offered to the workmen at the gate and on refusal it was sent to them by Money Order. On perusal of Ex. M-17 to M-70, it transpires that retrenchment compensation and Notice pay was sent to all the workers by post. These exhibits do not clearly indicate the date on which these were actually sent to the workers. Though the management have stated that these were sent on 2nd, 4th, 5th and 7th January, 1982. These amounts were received back undelivered. Thus it gives rise to suspicion as on which date the amount was sent after refusal of the workmen to accept it. The workmen took this compensation at the time of taking their full and final account as would be evident from full and final receipts on pages 153 to 212. I thus conclude from the foregoing facts that the management first laid off the workers and then retrenched them after displaying the seniority list and sending the information to Government in the prescribed proforma. In the instant case the lay-off continued for 45 days and then it was followed by retrenchment on 2nd January, 1982 for the entire establishment. Further the workmen representative has argued that only retrenchment compensation and Notice Pay was sent to the workmen only. No other dues was paid. Hence it was against the provisions of S. 5(2) of the Payment of Wages Act, 1936 but S. 25(F) of I.D. Act, 1947 enunciates as under :—

“No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice :

Provided that no such notice shall be necessary, if the retrenchment is under an agreement which specified a date for the termination of service :

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by Notification in the Official Gazette)”.

In view of this clear provision of law, only Retrenchment compensation and Notice pay is required to be sent to the workman first. The contention of the workmen representative is wrong.

However, I find that the final receipts do not bear date. Though the full and final payment has been received by the workmen, yet it remains doubtful whether the retrenchment compensation has been sent by the management by Money Order on refusal of the workmen to accept it in the factory premises, on the very day of declaring retrenchment. The management have not produced sufficient record to prove that the retrenchment compensation has been sent simultaneously after declaring retrenchment of the workmen. In a particular case, the full and final account was given to one Shri Surinder Kumar on 2nd January, 1982 but the payment was shown by money order. This gives rise to the belief that there has been some *mala fide* in making the payment of retrenchment compensation.

In 1977 I.L.L.J 607, it has been held that the passing of the cheque by the Company in favour of the respondent-employee on the date of retrenchment was an effective payment of compensation at that very moment of time which was also moment of retrenchment. Thus I conclude that the management has not complied with the contents of case law cited above.

The retrenchment was preceded by lay-off and the management also sent the information in the prescribed Form 'P' to Government. First Form indicates retrenchment of 57 workers on 2nd January, 1982; second Form indicates retrenchment of 110 workers on 4th January, 1982; third Form indicates retrenchment of 45 workers on 5th January, 1982 and fourth Form indicates retrenchment on one worker on 7th January, 1982. This comes to 213 Rule 75 of the Industrial Dispute (Punjab) Rules, 1958, clearly states

that the Form 'P' shall be sent within 3 days from the date on which notice-wages were paid. Workmen Representative has cited 1967 II LLJ. P. 23, 1977 LAB I C.P.-1338 and 1969 Lab-I-C 227 and 1981 Lab-I-C 806, but none of these rulings apply to the present case. The first two rulings are distinguishable while the later two rulings are not relevant. Management Representative cited 1970 II LLJ 564, 1977 Lab I.C. 694. In these rulings, it has been held that on refusal the payment should be sent by M.O. before retrenchment but this has been not done by the management. Hence the retrenchment has been affected contrary to the provisions of S. 25-F of the Industrial Disputes Act, 1947.

I thus, decide issue No. 1 in favour of the workmen.

#### ISSUES NO. 2 :

The management version is that M/s Northern Steel Co. is lying closed since 2nd January, 1982 for good. The short recital of the settlement Ex. M-71 also states this fact. The management has also produced a copy of settlement dated 11th June, 1982 Ex. M-71. The said settlement nowhere mentions about the closure of M/s Northern Steel Company. There is a little mention in the short recital only which does not prove that M/s Northern Steel Company is lying closed.

In view of the contravention of the provisions of S. 25-F, i.e. the payment of retrenchment compensation shall be made before retrenchment is affected. I thus, order for the re-employment of 62 workmen retrenched by the management in M/s Northern Steel Company.

The 13th May, 1983

No. 9(1) 82-6 Lab/3690.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 of Act No. XIV of 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of the Haryana Roadways, Jind.

BEFORE SHRI INDER SINGH DHULL, PRESIDING OFFICER, LABOUR COURT,  
HARYANA, ROHTAK

Reference No. 151 of 1981

between

SHRI MOHINDER SINGH, WORKMAN AND THE MANAGEMENT OF  
THE HARYANA ROADWAYS, JIND

Present :—

Shri M. S. Rathi, for the workman.

Shri Mohan Dass, for the management.

#### AWARD

This reference has been referred to this Court by the Hon'ble Governor,—vide his order No. ID/HSR/88-81/58625, dated 7th December, 1981, under section 10(i) (c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Mohinder Singh, workman and the management of the Haryana Roadways, Jind. The term of the reference was—

Whether the termination of services of Shri Mohinder Singh was justified and in order? If not, to what relief is he entitled?

20/3, Mathura Road, Faridabad. The claim of the workers for re-employment in M/s Northern India Iron and Steel Company is not maintainable as this is a separate from M/s Northern Steel Company. Former is a partnership firm while the later is a public limited Company. Both are separate legal entities. However, the workmen will refund the entire amount received by them as retrenchment compensation before seeking re-employment. It has been proved beyond doubt that 62 workmen have received their full and final accounts from the management as would be evident from pages 153 to 212 of the concerned file. The workmen have nowhere mentioned that they were not gainfully employed during the intervening period. Hence they will not be entitled to any wages for the intervening period because they have not performed any duty in the concern. However, their services for all other purposes shall be treated as continuous. I answer issue No. 2 in this manner. This may be read as answer to the reference. The file alongwith other relevant documents is consigned in the office of the Deputy Labour Commissioner, Faridabad for record and other reference.

AMAR SINGH YADAV,

Sole Arbitrator,

Labour-cum-Conciliation Officer,  
Ambala Cantt.

Dated 13th January, 1983.

K. G. VERMA,

Commissioner and Secretary to Government, Haryana,  
Labour and Employment, Department.

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared, filed their respective pleading and the following issues were framed by the learned predecessor on 8th October, 1982 :—

- (1) Whether the domestic enquiry conducted by the management is fair and proper?
- (2) As per the term of reference?

In evidence the management examined Raj Singh, Clerk as MW-1 and the workman examined himself and Shri Suraj Bhan as WW-1 and WW-2, respectively. I heard the arguments and decide the issues as under.

*Issue No. 1 :*

MW-1 Shri Raj Singh deposed that a complaint was received in the office against the concerned workman copy of the same was Ex. MW-1/1. He was charge-sheeted,—vide Ex. MW-1/3. Explanation copy Ex. MW-1/5 was received. S. S. I., Jind was appointed as Enquiry Officer. The Enquiry Officer submitted his findings Ex. MW-1/7. He was issued final show cause notice Ex. MW-1/8 and his services were terminated,—vide Ex. MW-1/11. In cross-examination he admitted that the enquiry was not held in his presence. He was not aware personally regarding the allegations. He was not aware if Shri Suraj Bhan was reinstated by the STC.

The concerned workman examined himself as his own witness and also examined Shri Suraj Bhan as WW-2. The concerned workman deposed that he was in the employment since 1973. He deposed that on 19th February, 1978 his duty was from Jind to Sonapat. He reached Sonapat at 6.30 P.M. and found that a wheel of the bus has punctured. He reported the matter to the head machanic of Sonapat workshop but the later declined to assist on the ground that the tool was not available in the workshop. Being Sunday there was no shop open in the city. Therefore on the next morning they got the wheel in order and started from Sonapat at 9.30 A.M. after informing the Route Inspector. There was some dispute with the Adda Conductor and he made a false complaint against him. The driver was responsible for the bus and not the conductor but his services was terminated. In cross-examination he admitted the holding of domestic enquiry and replied questions about removal of punture on the next day.

WW-2 stated that he was a driver in the Haryana Roadways. On 19th February, 1979 the duty of the concerned workman was on his bus. He corroborated the statement of the concerned workman regarding punture of the bus and its repair. He further stated that his appeal was accepted by the STC,—vide Ex. MW.2/1 and he was reinstated. He denied the suggestion that they missed the time on that day deliberately.

As regards the holding of domestic enquiry the evidence of the sole witness was only to the extent of producing documents. The Enquiry Officer was not produced nor any other witness. I have gone through the documents and find that the Enquiry Officer examined Shri Siri Ram, Adda Conductor. He was cross-examined at length. The workman appeared in his own defence and Shri Suraj Bhan also appeared in his defence. I find that there was no defect in the procedure adopted by the Enquiry Officer. The enquiry is, therefore, proper and the issue is accordingly decided.

*Issue No. 2 :*

I have gone through the enquiry report Ex. MW-1/7 and find that the Enquiry Officer found the workman guilty to the extent that they (Driver and Conductor) left the bus without informing Adda Conductor. As regards the charge-sheet Ex. MW-1/3 and MW-1/4 I find that the driver and conductor were charge-sheeted for negligence by missing trip of 70 km. from Sonapat to Gohana. It was also alleged that the tyre of the bus was deflated and a bogus bill for repair was obtained, thus the management suffered loss of revenue. In the statement of Shri Siri Ram Adda Conductor on whose complaint the charge-sheet was framed there was no mention of deflating of the tyre or preparation of bogus bill. The Enquiry Officer also did not hold the workman guilty of the abovesaid allegation. He only found them guilty for leaving the bus without informing the Adda Conductor.

I do not agree with the arguments of the learned representative for the management that the concerned workman was the guilty of misconduct because it was the driver who was incharge of the bus. As regards the punture of the wheel Shri Siri Ram in his statement could not deny the fact. There was another point in the arguments of the learned representative of the workman that on the basis of the same enquiry findings similar action was taken against the driver but finally he was reinstated. This action of the management is discriminatory. Both the workmen should have been treated at par in case the enquiry report was found acceptable by the management. The management has failed to establish a case of termination against the concerned workman. Therefore, I pass my award that the workman was entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned accordingly.

Dated the 7th April, 1983.

INDER SINGH DHULL,  
Presiding Officer,  
Labour Court, Haryana, Rohtak.

Endorsement No. 847, dated the 18th April, 1983.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

INDER SINGH DHULL,  
Presiding Officer,  
Labour Court, Haryana, Rohtak.  
ASHOK PAHWA, Comm. & Secy.